

1 **BEFORE THE ARIZONA STATE BOARD OF PHARMACY**

2 In the Matter of:)

Investigation Case Number 04-0033-PHR

3 DAVID J. GARDEN, RPh.
4 Holder of License No. 4518
For the Practice of Pharmacy
In the State of Arizona,

**CONSENT AGREEMENT AND ORDER
FOR SUSPENSION AND PROBATION**

5 Respondent)
6 _____)

7 **RECITALS**

8 In the interest of a prompt and judicious settlement of this case, consistent with the public
9 interest, statutory requirements and the responsibilities of the Arizona State Board of Pharmacy ("Board")
10 and under A.R.S. §§ 32-1901 *et. seq.* and 41-1092.07(F)(5), DAVID J. GARDEN ("Respondent"),
11 holder of pharmacist license number 4518 to practice pharmacy in the State of Arizona, and the Board
12 enter into the following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent
13 Agreement") as a final disposition of this matter.

14 1. Respondent has read and understands this Consent Agreement and has had the
15 opportunity to discuss this Consent Agreement with an attorney, or has waived the opportunity
16 to discuss this Consent Agreement with an attorney.

17 2. Respondent understands that he has a right to a public administrative hearing concerning
18 the above-captioned matter, at which hearing he could present evidence and cross-examine witnesses.
19 By entering into this Consent Agreement, Respondent freely and voluntarily relinquishes all right
20 to such an administrative hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial
21 review or any other administrative and/or judicial action, concerning the matters set forth herein.

22 3. Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.

23 4. Respondent understands that this Consent Agreement or any part of the agreement may
24 be considered in any future disciplinary action against him.

25 5. Respondent understands this Consent Agreement deals with Board Investigation
26 Case No. 04-0033-PHR involving allegations of unprofessional conduct against Respondent.

1 The investigation into these allegations against Respondent shall be concluded upon the Board's
2 adoption of this Consent Agreement.

3 6. Respondent understands that this Consent Agreement does not constitute a dismissal
4 or resolution of any other matters currently pending before the Board, if any, and does not constitute any
5 waiver, express or implied, of the Board's statutory authority or jurisdiction regarding any other pending
6 or future investigation, action or proceeding. Respondent also understands that acceptance of this
7 Consent Agreement does not preclude any other agency, subdivision, or officer of this State from
8 instituting other civil or criminal proceedings with respect to the conduct that is the subject of this
9 Consent Agreement.

10 7. Respondent acknowledges and agrees that upon signing this Consent Agreement and
11 returning this document to the Board's Executive Director, Respondent may not revoke his acceptance
12 of the Consent Agreement or make any modifications to the document regardless of whether the
13 Consent Agreement has been signed by the Executive Director. Any modification to this original
14 document is ineffective and void unless mutually agreed by the parties in writing.

15 8. Respondent understands that the Consent Agreement shall not become effective unless
16 and until adopted by the Board and signed by its Executive Director.

17 9. If a court of competent jurisdiction rules that any part of this Consent Agreement is void
18 or otherwise unenforceable, the remainder of the Consent Agreement shall remain in full
19 force and effect.

20 10. Respondent understands and agrees that if the Board does not adopt this Consent
21 Agreement, he will not assert as a defense that the Board's consideration of this Consent
22 Agreement constitutes bias, prejudice, prejudgment or other similar defense.

23 11. Respondent understands that this Consent Agreement is a public record that may be
24 publicly disseminated as a formal action of the Board and may be reported as required by law to
25 the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

26 12. Respondent understands that any violation of this Consent Agreement constitutes

1 unprofessional conduct under A.R.S. § 32-1927 (A) (17) (the licensee violated a formal order, terms of
2 probation, a consent agreement or a stipulation issued or entered into by the board or its Executive
3 Director pursuant to this chapter) and may result in disciplinary action under A.R.S. § 32-1927.

4 **REVIEWED AND ACCEPTED BY:**

5 *David J. Garden* 3-1-2005
6 **DAVID J. GARDEN** **DATE**

7 *Kristina Dawson Graham*
8 **Notary Public** 3-1-05



9 **FINDINGS OF FACT**

10 By stipulation of the parties, this Consent Agreement is entered into for final disposition of the
11 matters described herein. Respondent admits to the following Findings of Fact:

12 13. The Board is the duly constituted authority for the regulation and control of the practice
13 of pharmacy in the State of Arizona.

14 14. The Board possesses jurisdiction over the subject matter and over Respondent as a
15 licensee of the Board under A.R.S. § 32-1901, et seq.

16 15. Respondent is the holder of a license number 4518 which permits him to engage in the
17 practice of pharmacy in the State of Arizona.

18 16. On June 16th, 1980, pursuant to Board Order number 79-10-H, Respondent's pharmacist's
19 license number 4518 was placed on probation for a period of one (1) year for excessive discrepancies
20 disclosed in the controlled substance records at Value Discount Drug Center pharmacy of which
21 Respondent was a part owner.

22 17. On November 29th, 1990, pursuant to Board Order number 90-09-H, Respondent's license
23 number 4518 was placed on probation for a period of two (2) years when the Board found that
24 Respondent failed to maintain proper records on the receipt and distribution of controlled substance
25 records at Value Discount Drug Center pharmacy of which Respondent was the "responsible pharmacist"
26 (pharmacist-in charge).

18. On February 1st, 1993, pursuant to Board Order number 92-16-H, Respondent's license number 4518, was placed on probation for a period of two (2) years when the Board found that Respondent had failed to provide the controlled substance inventory required on May 1, 1992, and the Respondent had trained and certified intern training hours in violation of Board Order number 90-09-H.

19. Respondent was employed as a pharmacist between the dates of July 1, 2003 and January 25, 2004 at Eckerd Drugs pharmacy #5300 (now CVS #007) located at 9901 B W. Thunderbird Road, Sun City, Arizona.

20. Respondent was employed as the pharmacist-in-charge at Eckerd Drugs pharmacy #5309 (aka Eckerd Drugs #29), located at 15495 W. Bell Road, Surprise, Arizona from January 26, 2004 to August 23, 2004.

21. Respondent was employed as the pharmacist-in-charge at CVS Pharmacy #007 located at 9901 B W. Thunderbird Road, Sun City, Arizona from August 23, 2004 to November 5, 2004.

22. On November 5, 2004, Michael Calli, a pharmacy district manager with CVS pharmacy, sent a letter to the Board Office notifying the office that Respondent had been terminated from employment as a pharmacist with CVS as a result of an investigation by the CVS Pharmacy loss prevention department.

Eckerd Drugs #5309

23. On February 11, 2004, Respondent dispensed a prescription-only drug as defined in A.R.S. § 32-901 (72), Ethedent Dental Cream 51 gm., to patient S.G. without a valid prescription as required by A.R.S. § 32-968 (A).

24. On April 8, 2004, Respondent dispensed a prescription-only drug as defined in A.R.S. § 32-1901 (72), Celexa 40 mg. thirty (30) tablets, to patient S.G. without a valid prescription as required by A.R.S. § 32-1968 (A).

25. On April 16, 2004, Respondent dispensed a prescription-only drug as defined in A.R.S. § 32-901 (72), Lithium Carbonate 300mg. one hundred (100) capsules to patient S.G. without a valid prescription as required by A.R.S. § 32-968 (A).

1 26. On May 3, 2004, Respondent dispensed a prescription-only drug as defined in A.R.S.
2 § 32-1901 (72), cefuroxime 250 mg. twenty (20) tablets, to S.G. without a valid prescription as required
3 by A.R.S. § 32-1968 (A).

4 27. On May 29, 2004, Respondent dispensed a prescription-only drug as defined in A.R.S.
5 § 32-1901 (72), amoxicillin 125mg./5ml. suspension, to patient S.G. without a valid prescription as
6 required by A.R.S. § 32-1968 (A)

7 28. On May 29, 2004, Respondent dispensed a prescription-only drug as defined in A.R.S.
8 § 32-1901 (72), metformin 1 Gm., to patient S.G. without a valid prescription as required by A.R.S. § 32-
9 1968 (A).

10 29. On June 3, 2004, Respondent dispensed a prescription-only drug as defined in A.R.S.
11 § 32-1901 (72), Celexa 40 mg. forty-five (45) tablets, to patient S.G. without a valid prescription as
12 required by A.R.S. § 32-1968 (A).

13 30. On June 3, 2004, Respondent dispensed a prescription-only drug as defined in A.R.S.
14 § 32-1901 (72), Amoxicillin 125 mg./5ml., 100ml. suspension, to patient S.G. without a valid prescription
15 as required by A.R.S. § 32-1968 (A).

16 31. On July 30, 2004, Respondent dispensed a prescription-only drug as defined in A.R.S.
17 § 32-1901 (72), Allegra 180 mg. thirty (30) tablets, to patient S.G. without a valid prescription as
18 required by A.R.S. § 32-1968 (A).

19 **Eckerd Drugs #5300 / CVS Pharmacy #007**

20 32. On October 4, 2003, Respondent dispensed a prescription-only drug as defined in
21 A.R.S. § 32-1901 (72), Prevident 5000 dental cream fifty-one (51) grams to patient S.G. without a valid
22 prescription order as required by A.R.S. § 32-1968(A).

23 33. On September 22, 2004, Respondent dispensed a prescription-only drug as defined in
24 A.R.S. § 32-1901 (72), Budeprion SR 100mg. sixty (60) tablets to patient S.G. without a valid prescription
25 order as required by A.R.S. § 32-1968(A).

26 34. On August 24, 2004, Respondent dispensed sixty (60) tablets of a prescription-only

1 drug as defined in A.R.S. § 32-1901 (72), Budeprion SR 100mg. tablets to patient S.G. without a valid
2 prescription as required by A.R.S. § 32-1968(A).

3 35. On November 29, 2004, Dr. Kenneth Stephan signed a statement that the prescriptions
4 dispensed by Respondent to patient S.G. were not authorized by him for S.G. at all, or that they were
5 actually intended to be ordered to be dispensed to patient D.A. (S.G.'s son).

6 36. On November 30, 2004, Dr. Samuel Walker signed a statement that the prescriptions
7 dispensed by Respondent to patient S.G. were not authorized by him for S.G. at all, or that they were
8 actually ordered to be dispensed to patient D.A. (S.G.'s son).

9 CONCLUSIONS OF LAW

10 37. The Board is the duly constituted authority for the regulation and control of the practice
11 of pharmacy in the state of Arizona, under A.R.S. § 32-1901, et seq.

12 38. The conduct and circumstances described in paragraphs 25, 26 and 32 constitute
13 violations of A.A.C. R4-23-407 (A)(2) to wit:

14 **A.A.C. R4-23-407 (A)(2) :** A prescription order is kept by the pharmacist
15 or pharmacy permittee as a record of the dispensing of a drug or device for
16 three years from the date the drug or device is dispensed, except for a drug
or device personally administered by a medical practitioner to the medical
practitioner's patient.

17 39. The conduct and circumstances described in paragraphs 23 through 36 constitute
18 violations of A.R.S. § 32-1968 (A) & (C) to wit:

19 **A.R.S. § 32-1968 (A):** A prescription-only drug shall be dispensed only
20 under one of the following conditions:

- 21 1. By a medical practitioner in conformance with section 32-1921.
- 22 2. On a written prescription order
- 23 3. On an oral prescription order that is reduced promptly to writing and
24 filed by the pharmacist.
- 25 4. By renewing any written or oral prescription order if a renewal is
26 authorized by the prescriber either in the original prescription order or by
an oral order that is reduced promptly to writing and filed by the pharmacist

A.R.S. § 32-1968 (C) : A prescription order shall contain the date it was
issued, the name and address of the person for whom or owner of the
animal for which the drug is ordered, the name, strength, dosage form and
quantity of the drug ordered and directions for its use. A written
prescription order shall contain the printed name of the prescriber.

1
2 40. The conduct and circumstances described in the Findings of Fact above constitute
3 grounds for disciplinary action under A.R.S. § 32-1927 (A)(10) and A.R.S. § 32-1927 (B)(2) to
4 wit:

5 **A.R.S. § 32-1927 (A)(10)** The license of any pharmacist or pharmacy
6 intern may be revoked or suspended or a pharmacist or pharmacy intern
may be placed on probation by the board if :

7 The licensee is found by the board to be guilty of violating any Arizona or
8 federal law, rule, or regulation relating to the manufacture and distribution
of drugs and devices, or the practice of pharmacy.

9 **A.R.S. § 32-1927 (B)(2)** The license of any pharmacist or pharmacy intern
10 may be revoked or suspended or the pharmacist or pharmacy intern or
graduate intern may be placed on probation or censured and a civil penalty
11 of not more than one thousand dollars (\$1000.00) for each offense may be
imposed by the board if the licensee :

12 Is found by the board, or is convicted in a federal or state court, of having
13 violated federal or state laws or administrative rules pertaining to
marijuana, prescription-only drugs, narcotics, dangerous drugs or
14 controlled substances.

15 ORDER

16 Based upon the above Findings of Fact and Conclusions of Law and under the authority
17 granted to the Board under A.R.S. § 32-1928, 41-1092.07 (F)(5), and A.A.C. R4-23-104(C).

18 **IT IS HEREBY ORDERED** that :

19 41. License No. 4518, which was issued to Respondent for the practice of pharmacy in the
20 State of Arizona, is hereby placed on **SUSPENSION** for a period of five (5) days, to take place within
21 thirty (30) days of the effective date of this Order. Thereafter, Respondent's license shall be placed on
22 **PROBATION** for a period of three (3) years from the final date of suspension. Furthermore, Respondent
23 shall immediately return pharmacist license to the Board for the period of **SUSPENSION**. The
24 **SUSPENSION** and **PROBATION** are subject to the following conditions:

25 42. Respondent shall pay a civil penalty to the Board for each of the prescription-only drugs
26 that he dispensed to S.G. without valid prescriptions as listed in the above Findings of Fact in the total
amount of one thousand dollars (\$1,000.00) within ninety days (90) days of the date of this Order.

1 Payment of the civil penalty must be paid by Cashier's Check or Certified Check to the Board.

2 43. Respondent shall pay all fees and complete all Continuing Education requirements
3 throughout the term of his **SUSPENSION** and **PROBATION** to maintain pharmacist license number
4 4518.

5 44. Respondent shall not serve as a preceptor pharmacist throughout the term of his
6 **SUSPENSION** and **PROBATION**.

7 45. Respondent shall not serve as a pharmacist-in-charge for six (6) months from the date of
8 the Order.

9 46. Respondent shall obey all federal and state laws and rules governing the practice of
10 pharmacy.

11 47. Respondent shall furnish the Board with a list of all jurisdictions in which he maintains
12 or has maintained licensure in the profession of pharmacy along with the registration number of said
13 licenses.

14 48. Respondent is required to advise the Board immediately of any change in pharmacy
15 employment status throughout the term of his **PROBATION**.

16 49. Respondent is required to furnish all pharmacy employers with a copy of this Board
17 Order throughout the term of his **PROBATION**.

18 50. If Respondent violates this Order in any way or fails to fulfill the requirements of this
19 Order, the Board, after giving the Respondent notice and the opportunity to be heard, may revoke,
20 suspend or take other disciplinary actions against the Respondent's license. The issue at such a hearing
21 will be limited solely to whether this Order has been violated.

22 51. Respondent shall appear before the Board at a regularly scheduled Board meeting on or
23 after April 6, 2008 to request that the probation imposed by this Order be terminated. Respondent's
24 failure to petition the Board to terminate the **PROBATION** shall extend the **PROBATION** period.
25

26 DATED and EFFECTIVE this 6th day of April, 2005.

1 DATED and EFFECTIVE this 6th day of April, 2005

2 ARIZONA STATE BOARD OF PHARMACY

3 

4 Hal Wand, RPh
5 Executive Director
6 Arizona State Board of Pharmacy

7
8 ORIGINAL of the foregoing, fully executed,
9 filed this 7th day of April, with:

10 Arizona State Board of Pharmacy
11 4425 W. Olive Avenue, #140
12 Glendale, Arizona 85302

13 Fully Executed Copy of the foregoing sent
14 via Certified US mail this 7th day of
15 April, 2005 to:

16 DAVID J. GARDEN
17 6838 W. Donald Drive
18 Glendale, AZ 85310

19 Copy or the foregoing mailed
20 this 7th day of April, 2005 to:

21 Roberto Pulver
22 Assistant Attorney General
23 1275 W. Washington, CIV/LES
24 Phoenix, Arizona 85007
25 Attorney for the State

26 By: 

#7000 1670 0006 4393 3573

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>1. Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. 2. Print your name and address on the reverse so that we can return the card to you. 3. Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Received by (Please Print Name) <u>Shirley G. Gentry</u> B. Date of Delivery <u>APR 12 2005</u></p>	
<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>		<p>C. Signature <u>Shirley G. Gentry</u> D. Agent <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>5. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>		<p>6. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>7. PS Form 3811, July 1999 Domestic Return Receipt</p>		<p>8. 102595-00-M-0952</p>	



ARIZONA STATE BOARD OF PHARMACY

4425 WEST OLIVE AVENUE, SUITE 140
GLENDALE, ARIZONA 85302-3844
623-463-ASBP (2727) FAX 623-934-0583
www.pharmacy.state.az.us

January 5, 2005

David J. Garden
6838 W. Donald Drive
Glendale, AZ 85310

Dear Mr. Garden,

This letter and accompanying documents is an offer to enter into a stipulated agreement and Board Order as a result of a completed investigation. The Consent contains allegations which are violations of pharmacy statutes or rules.

In the interest of saving the time, expense and inconvenience of a formal hearing in this matter, I have drafted a Consent Agreement and a proposed Board Order for your consideration.

The Board Order is consistent with Board action on disciplinary matters in Arizona. Should you decide to accept the Consent Agreement, please sign the Consent to Entry Order document, have it notarized, then return it to me at this office. The full Board will decide to accept or reject the Order at the next regularly scheduled Board meeting. I would appreciate hearing from you as soon as possible, before the last day of January, 2005, if you desire to enter into a consent agreement.

Please contact me at this office to verify understanding of the documents or to clarify any issues that concern you.

Sincerely,

Hal Wand
Executive Director

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

David J Garden
6838 W Donald Drive
Glendale AZ 85310

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature

X

☐ Agent

☐ Addressee

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

Service Type

☒ Certified Mail

☐ Registered

☐ Insured Mail

☐ Return Receipt for Merchandise

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number (Copy from service label)

7000 1670 0006 4393 0183

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952